



April 17, 2002

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2002-1940

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161434.

The City of Victoria Police Department (the "department") received a request for copies of "any reports on [a specified person] specifically April 2001 for family violence." You state that you have released some responsive information to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that a portion of the information is excepted from disclosure pursuant to section 552.101 of the Government Code. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy when (1) the information is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). We note that the requestor in this instance is asking for copies of unspecified reports in which the specified individual is identified. Therefore, the request requires the department to compile reports relating to this individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individual's right to privacy to the extent that it includes arrests and investigations where the individual is a suspect in a case. Accordingly, we conclude that the department must withhold the information from disclosure

pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy to the extent that the information reveals that the specified individual is a suspect, arrestee, or defendant in a case.

We note that section 552.101 also encompasses information protected from disclosure by other statutes, such as former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. We have marked the information that concerns juvenile conduct that occurred prior to January 1, 1996. These records are confidential under former section 51.14(d) of the Family Code and, thus, must be withheld from disclosure pursuant to section 552.101 of the Government Code.

You claim that some of the information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a) provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that this information concerns cases that are currently being investigated by the department for possible presentation to the Victoria County District Attorney or City Attorney for prosecution. However, we note that offense report number 9806429-00 pertains to an alleged terroristic threat that was made on April 1, 1998, that offense report number 9811144-00 pertains to an alleged unauthorized use of a motor vehicle that occurred on June 8, 1998, and that offense report number 9811144-01 pertains to an alleged theft of property valued at less than \$50 that occurred on June 8, 1998. Although you state these particular cases are still being investigated by the department, it appears that the statute of limitations has already run for all three cases. *See* Penal Code §§ 22.07, 31.03(e), 31.07(b); *see also* Crim. Proc. Code, arts. 12.01, .02. You have not adequately explained how or why the release of the information pertaining to these particular cases "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Therefore, we conclude that you may not withhold from disclosure any information pertaining to the three cases for which it appears that the statute of limitations has run pursuant to section 552.108 of the Government Code. However, we find that the release of the remaining records "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe

such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public). Accordingly, with the exception of basic information, the department may withhold the remaining information from disclosure pursuant to section 552.108 of the Government Code.

We note that some of the records pertaining to the cases for which the statute of limitations has already run contain Texas license plate numbers that are subject to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the Texas license plate numbers that we have marked from disclosure pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy to the extent that the information reveals that the specified individual is a suspect, arrestee, or defendant in a case. The department must withhold from disclosure the information that we have marked pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code. Except for basic information, the department may withhold the information that we have marked from disclosure pursuant to section 552.108 of the Government Code. The department must withhold from disclosure the Texas license plate numbers that we have marked pursuant to section 552.130 of the Government Code. The department must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

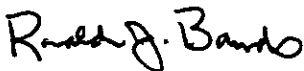
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 161434

Enc. Marked documents

cc: Ms. Susan Nelson
1045 John Pettus Road
Goliad, Texas 77963
(w/o enclosures)